IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No.10454 and 10899 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGRICULTURE PRODCE MARKET COMMITTEE, PORBANDAR

Versus

STATE OF GUJARAT THRO' SECRETARY

Appearance:

1. Special Civil Application No. 10454 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1

Ms.Manisha Lavkumar, Ld. AGP for Respondent No.1-2

..... for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 30/10/2002

ORAL JUDGEMENT

1. Rule in both these petitions. Ms.Manisha Lavkumar, learned AGP appears for the respondent authority and waives service of notice of rule. Mr.Jhaveri, learned Counsel appears and waives for

respondent No.3 in SCA No.10454/2002 and Mr.Pahwa, learned Counsel appears and waives for respondents No.3 and 4 in SCA No.10899/2002. With the consent of all the parties, these matters are taken up for final hearing today.

2. Since the facts are common, questions involved are common and common order is under challenge in these petitions, they are dealt with by this common judgement.

3. The short facts of the case are that one Mr.Govindji Ramjibhai Popat, respondent No.3 in SCA No.10454/2002 was functioning as the Secretary of Agriculture Produce Market Committee, Porbandar. On 23-1-2001, the said Mr.Govind Ramji had tendered his resignation. It is the case of Mr.Govind Ramji that he had withdrawn the resignation as per the communication dated 31-1-2001 and he had sent the said communication by registered post. However, the contention of the Market Committee is that no such communication has been received by the Market Committee and on 8-2-2001 in the Board Meeting, the said resignation of Mr.Govind Ramji was accepted. It is also the case of the Market Committee that after the acceptance of the resignation as per the letter dated 9-2-2001, the said Govind Ramji was asked to hand over the charge of the records, which were in his control and on 10-2-2001, the records were also handed over by the said Govind Ramji to the Chairman of the Market Committee. It is also the case of the Market Committee that on 5-2-2001 (7-3-2001) the said Govind Ramji requested the Market committee to pay the retiral benefits. However, the fact remains that no such retiral benefits are paid.

4. The said Govind Ramji approached before the Director of Agriculture Produce Market and Rural Finance in connection with his resignation. The Director of Agriculture Produce Market and Rural Finance heard the Market Committee as well as Mr.Govind Ramji and after hearing, on 28-11-2001 the Director passed the order, whereby it was found by him that the resignation is not properly accepted since the same was withdrawn prior to the acceptance, and the Director also observed that proper procedure should be followed by the Market Committee as required under Rule 41(3) of the Gujarat Agriculture Produce Market Rules, in connection with the resignation or if they have no confidence in the said Secretary or if there are any proceedings for misconduct. The said order of the Director dated 28-11-2001 came to be challenged by the said Govind Ramji by preferring revision under Section 48 of the Gujarat Agriculture

Produce Market Act before the State Government and ultimately, after the hearing of both the sides, the State Government passed the order dated 6-9-2002, whereby it is directed that no steps should be taken for the purpose of filling up of the post of the Secretary pursuant to the advertisement dated 20-6-2001 and the Market Committee may follow the procedure under Rule 41(3) and until then the applicant Govind Ramji should be continued on the original post. The petitioner of SCA No.10454/2002 (Market Committee) has challenged the said order of the State Government before this Court in the said petition.

5. In SCA No.10454/2002, this Court had passed the order on 17-10-2002, which reads as under:

" The Ld.Counsel Mr.Pahwa states that he will get instructions from the Market Committee as to whether the Market Committee would be satisfied if this court interfers qua the order of the State Govt in respect to the wages/salary to be paid from 23.1.01 till today even if the respondent No.3 is reinstated or allowed to function as Secretary without prejudice to the rights and contentions of the Market Committee to follow the procedure in accordance with law.

Put up on 21.10.02

17.10.02 (JAYANT PATEL,J.)"

Pending the aforesaid petition, SCA No.10899/2002 came to be filed by the said Govindji Ramjibhai Popat against the Market Committee and the officers of the State Government for the relief to direct the Market Committee to implement the decision of the Deputy Secretary of the State Government in Revision dated 6-9-2002 with all consequential benefits.

6. Pursuant to the aforesaid order dated 17-10-2002 passed by this Court in SCA No.10454/2002, the learned Counsel, Mr.Pahwa appearing for the Market Committee has stated that the Market Committee is ready to reinstate the said Govind Ramji. However, in any case, the said Govind Ramji would not be entitled to the back wages from the date of resignation until the reinstatement. Mr.Pahwa submitted that liberty may be given to the Market Committee to follow proper procedure for either seeking approval for the acceptance of the resignation or for removal of the Secretary under Rule 41(3) since he is not holding the necessary qualification to function as

Secretary of the Market Committee.

7. On behalf of Govind Ramji, respondent No.3 in SCA No.10454/2002 and the petitioner of SCA No.10899/2002, learned Counsel Mr.Jhaveri has submitted that for the purpose of acceptance of resignation, two-thirds majority is required at the Board's meeting of all members and it is an admitted position that the resolution is passed by the votes of 10 members out of 14 members present in the said meeting and, therefore, as per his submission, the acceptance of the resignation cannot be said to be legal and in any case, his client had withdrawn the resignation before the acceptance and hence the order passed by the State Government is proper. Mr.Jhaveri submitted that since the action of the Market Committee is found to be illegal, as a necessary consequence, his client would be entitled to the back wages for the interregnum period i.e. from the date of resignation until the date of reinstatement. However, he lastly submitted that his client should, in any case, be awarded back wages for the period from the date of the order of the Director till the date of reinstatement.

8. So far as the orders of the Director and the State Government are concerned, the learned AGP has supported the order of the State Government, but at the same time, she submitted that the powers were exercised as quasi judicial authority and the matter is left to the Court since the dispute is between the Secretary and the Market Committee.

9. Having considered the above, I am of the view that there is no substance in the contention raised by Mr.Jhaveri that for the purpose of acceptance of the resignation two-thirds majority is required as per the provisions of Rule 41(3) of the Gujarat Agriculture Produce Market Rules. Rule 41(3), which is relevant for the purpose of this petition reads as under:

> "41(3) No secretary shall be removed from office, reduced in rank or suspended unless by the assent of at least two thirds of the total number of the members of the market committee and with the previous approval of the Director [xxx]"

On the correct interpretation of the aforesaid provision, it transpires that in a matter of removal of secretary from office, or reduction in rank or suspension, the resolution must be supported by two-thirds of the total number of the members of the market committee and the approval of the director should

be obtained. The acceptance of the resignation or the cessation of the relationship of the employer and the employee or the action of the voluntary resignation cannot be equated with the exercise of power for removal or reduction in rank or suspension. In my view, in a matter of acceptance of resignation of Secretary, Rule 41(3) will have no application and, therefore, the said contention of Mr.Jhaveri fails and hence rejected.

10. The above takes me to the question of legality and validity of the acceptance of the resignation and the procedure to be followed for the purpose of giving the effect to the decision of the Market Committee for acceptance of the resignation. Section 22(1) of the Act, in my view, would be relevant in the present case, which reads as under:

> 22. Appointment of servants of market committee and conditions of vice. - (1) There shall be a Secretary for every market committee, who shall be appointed by the market committee with the approval of the Director and subject to the terms and conditions prescribed. The Secretary shall exercise such powers and perform such duties as the market committee may from time to time direct."

If the appointment is to be given by the market committee to any person as a Secretary, the same can be made with the approval of the Director and, therefore, as per the General Clauses Act; Any procedure which is required to be followed for the purpose of doing any action, would be the same procedure while undoing the said action or cancellation thereof. On a reasonable construction of Section 22(1) of the Act, it appears that even in a matter of acceptance of the resignation, the Market Committee may have power to accept, but the same can be given effect to only with the approval of the Director for such purpose, since the relationship of the Market Committee and the Secretary as employer and employee is subject to the approval of the Director. It is an admitted position that in the present case, the approval of the Director is not obtained by the Market Committee for the purpose of acceptance of resignation. It is the case of the Market Committee that the communication for withdrawal of resignation is not received by the Market Committee before the same was accepted, whereas the case of the Secretary is that he had forwarded the communication. Since the said aspect is a factual aspect, I am not expressing any opinion on the same and more over, in my opinion, even if the

resignation is accepted, the fact remains that the Director has not granted approval to the said decision and before the said approval is granted by the Director, the Secretary had shown his willingness to withdraw his resignation and he had disclosed before the Director that his resignation was withdrawn prior to the acceptance. Therefore, the Director has observed that the proper procedure would be required to be followed. Since, at the relevant point of time, the proper procedure as required under law is not followed, the Director was justified in passing the order. In my view, the net result of both the orders i.e. the order passed by the Director and the order passed by the State Government, is that the Market Committee has not followed the proper procedure and if the Market Committee wants to exercise the power of removal under Rule 41(3), then the procedure under Rule 41(3) should be followed. Therefore, in my view, to that extent no fault can be found with the orders passed by the State Government and by the Director, if the orders are construed accordingly.

11. However, the contention raised by Mr.Pahwa on the question of consequential back wages deserves consideration. In the present case, it is not a matter of termination of service by any employer. It is the case of voluntary action of resignation submitted by the Secretary concerned. It may be that subsequently the said resignation was withdrawn, but the contention of the Market Committee is that the withdrawal is not communicated and, in any case, prior to the so-called withdrawal resignation was accepted and not only that, but the charge of the records was also handed over. It appears that subsequently at the time when the market committee issued advertisement to fill up the post the same was subject matter of the dispute before the Director and the State Government. Therefore, it cannot be said that there is no laps whatsoever on the part of Govind Ramji, nor can it be said that the action of the market committee was arbitrary. As a matter of fact, it appears that subsequently also no attempts were made by Govind Ramji. The fact also remains that the said Govind Ramji, who was working as the Secretary has not actually worked or discharged his duties as the Secretary of the Market Committee from the date of resignation till today.

12. In case of "P.G.I. of Medical Education & Research, Chandigarh Vs Raj Kumar" reported in 2001(2) SCC, 54, the Apex Court has observed at para 12 as under:

"12. Payment of back wages having a discretionary element involved in it has to be

dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd.1 be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only."

Further in case of "National Aluminium Co. Ltd. Vs Deepak Kumar Panda and Others", reported in 2002(6) SCC, 223, the Apex Court at para 5 has observed as under:

"5. As regards the educational qualification, it is apparent from the pleadings and materials placed before us that the respondent did not submit the original or authenticated copy of the certificate of having passed three-year higher course in Aurobindo International Centre, Pondicherry. It seems that at the time of initial appointment, he produced a testimonial or certificate from the Registrar of the Centre to the effect that he had completed the three-year higher course. A doubt was entertained on the aspect whether the date of completion of course as found in the photostat copy produced by the respondent in 1990 was an interpolation. The High Court found, on the basis of a clarificatory letter of the Registrar issued subsequent to the termination, that there was factually no tampering with the certificate dated19-11-1980. Be that as it may, the fact remains that the respondent failed to produce the original certificate of having attained the qualification or authenticated copy thereof, though a number of opportunities were given to him. The reason for his inability to produce the certificate has not been explained. He is only harping on the secondary evidence in the form of testimonial/letter issued by the Registrar bearing the date 19-11-1980. In these circumstances, the High Court ought not to have entered into the factual finding that the respondent possessed the necessary qualification. The High Court clearly misdirected itself in doing so. At the same time, it cannot be presumed that the respondent had not passed the three-year higher course in Aurobindo International Centre, which is undisputedly

> equivalent to graduation. It is pertinent to note, at this juncture, that the petitioner Company failed to produce, either before the High Court or before this Court, the certificate dated 19-11-1980 issued by the Registrar, which according to the High Court is a genuine one. In this fluid state of things, the proper course would be to give a final opportunity to the respondent to produce the original or authenticated certificate issued by the competent authority of Sri Aurobindo International Centre, Pondicherry. For this purpose, two months' time is granted to the respondent to produce the same. On approach being made by the respondent, we do hope that the authorities of Sri Aurobindo International Centre would take expeditious steps to verify the record concerned and issue the certificate in original or a certified copy thereof. On production of such certificate, the respondent shall be appointed on regular basis as Assistant (French Interpreter post not being available now) with effect from the date of judgement of the High Court i.e. from 29-7-1996 and the respondent be fixed up in appropriate pay scale. As the respondent has to partly blame himself for the situation in which he is placed, we are not inclined to grant the benefit of retrospective regularization from an earlier date or to award any back wages."

13. If the case law on the said aspect is examined, it appears that awarding of back wages is a discretionary relief which would be decided of facts of each case. Therefore, if the Court finds that the situation is created on account of voluntary action of employee and there is no arbitrary exercise of power by the employer application of the principles of "no wage for no work" would be rather in larger public interest in addition to equitable consideration.

14. Hence I am of the view that the principles of "no wage for no work" should be applied in the present case and there is no reason to burden the Market Committee, which is a public body by awarding back wages to the employee, who has not actually worked as the Secretary. I am also inclined to take such view because of the peculiar circumstances of the case that it cannot be absolutely said that there is any fault committed by the Market Committee because so far as the proper procedure to be followed even for acceptance of the resignation under Section 22(1) of the Act is concerned, neither the

Director, nor the State Government has examined the said aspect. Moreover, on behalf of the Market Committee, I find that at present a fair stand is taken of allowing the petitioner to be reinstated in service subject to the proper procedure which may be followed by the Market Committee. I am also not expressing any opinion on the point as to whether the said Secretary is holding the necessary qualification to work as a Secretary of the Market Committee or not and the said contention is kept open.

15. In view of the above discussion, the order dated 6-9-2002 passed by the State Government in Revision Application No.25/2002 shall stand modified to the effect that respondent No.3 in SCA No.10454/2002, as a consequence of this order, shall be entitled to reinstatement to the post of Secretary and he shall not be entitled to any back wages from the date of his resignation till his reinstatement. However, at the same time, the Market Committee is directed to reinstate respondent No.3 as the Secretary within a period of one week from today and after respondent No.3 is reinstated in service, it will be open to the Market Committee to follow proper procedure in accordance with law and if such procedure is followed, it would also be open to respondent No.3 to ventilate the grievance. The contentions of both the sides are kept open. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly. No costs.

30-10-2002 (Jayant Patel, J.)

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